

REMARKS

The Office Action and cited references have been reviewed. No claims have been added. Claims 43-44 have been cancelled. Claims 26, 28, and 37 have been amended. Support for the amendments is found generally within the application. Claims 26-37, 39-42, and 45 remain pending. Consideration of the pending claims is respectfully requested.

Objection to the Claims

The Office Action included an objection to claim 44 because that claim improperly depended from claim 44. Claim 44 has been cancelled. Therefore, it is respectfully submitted that the objection is moot and should be withdrawn.

Rejection under 35 U.S.C. §102

The Office Action has rejected claims 26-28, 33-37, and 41-45 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. App. No. 5,520,291 to Graham (hereinafter "Graham"). This ground of rejection is respectfully traversed. Reconsideration of the rejection in view of the following comments is respectfully solicited.

To reject a claim under 35 U.S.C. §102, each and every limitation must be found, expressly or inherently, in a single reference and arranged as required by the claims such that the reference discloses the identical invention. *See* M.P.E.P. §2131. Anticipation is not established if, in reading a claim on something disclosed in a reference, it is necessary to pick, choose, and combine various portions of the disclosure not directly related to each other by the teachings of the reference. *See Ex parte Beuther*, 71 USPQ2d 1313 (BdPatApp&Int 2003), citing *In re Arkley*, 172 USPQ 524, 526 (CCPA 1972).

It is respectfully submitted that Graham does not teach or suggest the invention claimed by claims 26-28, 33-37, 41-42, and 45 and therefore cannot anticipate these claims because it fails to teach each and every limitation required by these claims as is required by 35 U.S.C. §102 and explained below.

The Office Action has rejected independent claim 26. Claim 26 has been amended to incorporate the limitations of claim 44 to more clearly define the invention¹. As presently

¹ The Applicants have amended claim 26 to include the limitations of claim 44. Therefore, the Patent Office was aware of the limitation of claim 44 and any new ground of rejection introduced in the next office action would not be necessitated by Applicant's amendment. Indeed, anticipation rejections were advanced against claim 44. As a result, under M.P.E.P. §706.07(a), should the next office action include a new ground of rejection the action should not be made final.

written, claim 26 recites, *inter alia*, that the product retainer includes the limitation that "respective hinges connect each side to the product retainer, the product retainer pivotable relative to the sides upwardly and downwardly via the hinges". Clearly, "hinges" is plural meaning at least two and the word "respective" means each side has a hinge. In contrast, in FIGS. 16 and 17, Graham employs a single hinge 37, 39 on one side of the frame 10 such that the locking bar 4 is swung outwardly when the gun rack is opened. (See also Col. 5, lines 35-41). As such there can be no anticipation. In light of the clear distinction between a product retainer pivoting upwardly and downwardly relative to the sides about a pair of hinges and a locking bar swinging outwardly about a single hinge as claimed, it is respectfully submitted that Graham does not teach or suggest the limitation recited in claim 26. Therefore, there can be no anticipation by Graham. M.P.E.P. §2131.

It is further submitted that no new obviousness rejections should be raised over Graham in the next action. Not only does Graham fail to expressly disclose the pair of hinges as recited in claim 26, it is respectfully submitted that Graham also teaches against the same. In fact, in Col. 5, lines 42-43, Graham expressly states that the embodiments with hinges in FIGS. 16 and 17 are not preferred because of an increase in manufacturing costs. If the use of a single hinge would be cost prohibitive, Graham would certainly not suggest using two hinges. Therefore, considering Graham as a whole, including portions of the reference that teach away from the claimed invention, any reliance on Graham for a suggestion of using two hinges would be misplaced and prohibited by M.P.E.P. §2143.03(VI).

The Applicants also submit that the single hinge of Graham undesirably requires that the locking bar be swung outwardly and away from the back portion of the frame when the toolbox is opened. In a retail setting where merchandise is displayed for a customer along an aisle, this would be unacceptable. Having the locking bar jetting out into an aisle in the store would impede customers attempting to move down the aisle, would present a potentially dangerous obstacle for the customers to navigate, would make the merchandise inaccessible while the merchandise system is in the open position, and the like. As a result, the claimed distinction is of significant consequence and cannot be overlooked.

In view of the foregoing, it is respectfully requested that the rejection of claim 26 be withdrawn, and no new rejections be advanced.

Claims 27-28 and 33-36 depend from and include the limitations of claim 26 and are believed to be patentable for the reasons stated above for claim 26. Therefore, it is respectfully requested that the rejection of claims 27-28 and 33-36 be withdrawn.

The Office Action has also rejected independent claim 37. Claim 37 has been amended to more clearly define the invention. As presently written, claim 37 recites, *inter alia*, "a plurality of hinges pivotably connecting the product retainer to the sides proximate the front end wherein the product retainer is pivotable upwardly and downwardly about the hinges relative to the sides when moved from the locked condition to the unlocked condition." In contrast, in both FIGS. 16 and 17, and as discussed above, Graham employs a single hinge that permits the locking bar 4 to move relative to the frame 10 such that the locking bar is swung outwardly when the gun rack is opened. In light of this clear distinction between pivoting upwardly and downwardly about a plurality of hinges and swinging outwardly about a single hinge, Graham does not teach or suggest the limitation recited in claim 37. As before, the single hinge of Graham if applied to a retail setting would cause the locking bar 4 to be undesirably swung out into the aisle in a retail setting where merchandise is displayed for a customer.

In view of the foregoing, it is respectfully requested that the rejection of claim 37 be withdrawn.

Claims 41-42 and 45 depend from and include the limitations of claim 37 and are believed to be patentable for the reasons stated above for claim 37. Therefore, it is respectfully requested that the rejection of claims 41-42 and 45 be withdrawn.

Rejection under 35 U.S.C. §103

The Office Action has rejected claims 29-32 and 39-40 under 35 U.S.C. §103(a) as being unpatentable over Graham in view of U.S. Pat. App. No. 4,155,458 to Moline (hereinafter "Moline"). This ground of rejection is moot in light of the claim amendments and the above remarks as explained below.

The Office Action has only relied upon Moline for the teaching of a peg hook being slideably mounted on a peg hook support bar. It is respectfully submitted that the addition of such the peg hook from Moline does not cure the deficiency of Graham to teach respective hinges connecting each side to the sides thereby allowing the product retainer to pivot upwardly and downwardly. As also pointed out above, any modification of Graham would be against the teaches of Graham. Therefore, claims 29-32 are believed to be patentable for the reasons stated above for claim 26. It is respectfully requested that the rejection of claims 29-32 be withdrawn.

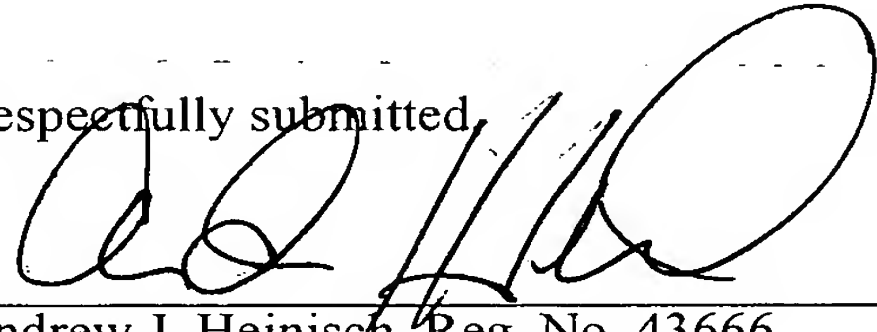
In re Appln. Of: Craig Zadak, et al.
Application No.: 10/663,601

For completeness, it is noted neither reference pertains to retail lock displays. Graham is directed to locking firearms within a gun rack and Moline is directed to hanging tools in a toolbox. This is clearly evidenced by the fact that the locking bar of Graham and the panel member of Moline are rotated outwardly a substantial distance when the gun rack and toolbox are respectively placed in the open position. If the gun rack and toolbox were used in a retail setting, the locking bar of the panel member would project directly out into the areas normally occupied by customers (e.g., the aisle of a store). For example, as shown in FIG. 3 of Moline, when the toolbox is placed in the open position, the front panel extends outwardly (to the right in FIG. 3) almost three times the width of the entire toolbox. This presents a highly dangerous and otherwise undesirable condition. An inventor trying to solve a problem with a device specifically for use in retail would not look to Graham and Moline for guidance. As such, both of the cited references are not reasonably pertinent to the particular problem being solved by the present application and would not provide a proper basis for rejection as noted in M.P.E.P. §2141.01(a). As such, and in view of prior arguments on Moline in previous responses, no new rejections should be raised.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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